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C O N F I D E N T I A L SECTION 01 OF 03 MEXICO 000006

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E.O. 12958: DECL: 12/18/2019
TAGS: [ECON](#) [ELAB](#) [PGOV](#) [MX](#)
SUBJECT: AFL-CIO VISITS OUSTED UNION

REF: A. MEX 3371
[1](#)B. MEX 3200
[1](#)C. MEX 3107
[1](#)D. MEX 2978
[1](#)E. MEX 2933

Classified By: AMB CARLOS PASCUAL, REASONS 1.4 (B) AND (D)

[1](#)1. (C) Summary: On December 1-2, high-ranking members of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) and the Canadian Labour Congress (CLC) visited Mexico on a joint fact-finding and solidarity mission to understand first-hand the situation of the Sindicato Mexicano de Electricistas (SME). The SME was the union associated with the state-owned power company Luz y Fuerza del Centro that President Calderon dissolved by decree on October 11. The SME and its allies continue to vehemently protest the dissolution, alleging that the Government of Mexico acted illegally and unconstitutionally. The delegation met with SME members, leaders, and lawyers on December 1 and with the U.S. and Canadian embassies, members of the Chamber of Deputies, and the Under Secretary for Work of the Secretariat of Labor and Social Prevision on December 2. The delegation's activities also included a welcome dinner with former SME president Martin Esparza and a visit to SME headquarters in Nexaca. The sympathetic views of the visiting delegation for the SME are widely out of line with Mexican legal experts, corruption specialists, and public opinion. End summary.

Meeting the Press

[1](#)2. (C) After the meetings with SME members, lawyers, and supporters, the delegation gave a joint press conference with the SME on the morning of December 2. Stanley Gacek, Associate Director of International Affairs of the AFL-CIO, and Hassan Yussuff, Secretary Treasurer of the CLC, stated that Mexico has violated both human and labor rights under its own laws and international obligations as well as the terms of the North American Agreement Labor Corollary (NAALC) - also a NAFTA violation. Specifically they claimed that Mexico acted in an anti-union manner in dissolving the union and violated workers' individual rights to appeal the government's decision in terminating their employment. Yussuff's comments were significantly sharper than Gacek's, but both stressed that the SME is and has always been a union that favors dialog and not giving in.

Meeting the Embassies

[1](#)3. (C) Representatives of the U.S. and Canadian embassies met the delegation on December 2 to learn what the delegation had heard from the SME. The main themes of the meeting were privatization of the energy sector complicated by what the delegation characterized as a lack of respect for rule of law and concern over the inefficacy of NAFTA and the NAALC. U.S.

members of the delegation seemed more interested in genuine discussion than their Canadian counterparts. In a carefully worded statement, the delegation discussed the violations of Mexico,s internal laws as well as Mexico,s legal obligations under its international treaties, specifically ILO convention 87, the Inter-American Human Rights Charter, and the labor side agreement to NAFTA (NAALC). They also reminded the Embassies of the North American Summit in Guadalajara in August 2009 in which all three leaders agreed that security, energy, and sustainable employment are priorities for the region. They questioned President Calderon,s decision to eliminate more than 44,000 jobs at this time of year (approaching the holidays), during an economic downturn, and so quickly after agreeing that decent work is a crucial part of a regional stabilization strategy.

14. (C) Delegation members from the U.S. mentioned rule of law as the pricipal issue several times, both in the context of the SME case and as a concern over fears of privatization. They accepted, apparently unconditionally, the SME,s claims that this is the first step towards privatizing Mexico,s electricity sector. The energy union representative insisted that privatization in the U.S. and Canada occurred within relatively strong legal systems with protection for workers and respect for contracts. He feared that Mexico would disregard its contractual obligations and that workers would suffer the consequences. Another representative believed that what happened with the SME is a classic case of union-busting by a hostile government. If the SME does not win its legal and social battles, it will mean that the Mexican legal system cannot or will not protect workers. Moreover, the GOM

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will be empowered to systematically eliminate every union it finds inconvenient.

15. (C) Although in some ways the center of the discussion, the SME was not mentioned by name very often. The delegation saw the SME's demise as part of a bigger pattern. When delegation members did mention the SME, they stressed its long history of militancy, radicalism, and independence. (Comment: These labels, especially radical and independent, have meaning within the Mexican labor movement that needs to be further defined. The SME became independent when it left the Institutional Revolutionary Party (PRI) to support the Democratic Revolutionary Party (PRD) and its candidate, Andres Manuel Lopez Obrador, in the 2006 presidential elections. The delegation clarified that it did not consider the unions for PEMEX or the Federal Electricity Commission, the two other significant unions in the energy sector, independent, but did not define its rationale. End comment.) They also insisted that the SME is a union with a history of negotiating but not giving in, and that Esparza has always been willing to talk to the government. They were not impressed that the GOM has also always been willing to talk to the SME. They consider the SME's intractability, i.e., the non-negotiable point is rehiring all workers and reversing the liquidation decree, a reasonable starting point but reject the GOM,s position that the decree is irreversible and the workers cannot be rehired legally under a collective contract. The legal basis for this position is that the GOM should not have made decisions that cannot be appealed and that the situation must return to the status quo ante for there to be a level negotiating field.

Meeting the Under Secretary for Labor of the Secretary of

Labor and Social Prevision

16. (C) Laboff facilitated a meeting with Under-Secretary for Labor Alvaro Castro at the Secretariat for Labor and Social Prevision (STPS). The meeting was chaired by Castro; Jorge Rodriguez and Daniel Ludlow both contributed significantly. Castro welcomed the delegates and then

expressed his frustration that Yussuff was unable to be present because he wanted to personally and specifically respond to Yussuff's allegations of illegal actions in the morning press release. Castro thoroughly explained and supported the GOM's belief in the legality and constitutionality of its actions and responded to the complaints as he understood them, focusing on the following legal and rehiring issues.

- a. The electrical company Luz y Fuerza del Centro (LFC), being a decentralized, state-run company formed by presidential decree can and must be dissolved by presidential decree. Congress has no role to play in the process; what Calderon did was neither illegal nor unconstitutional.
- b. The GOM had tried to work with LFC over several years and different administrations to improve service and productivity and to reduce cost to taxpayers, and LFC had regularly failed to meet agreed upon objectives. This was not a surprising coup but rather a logical end to a long struggle with a non-cooperative partner.
- c. The GOM is happy to meet former SME members at a negotiating table and in fact agreed to do so on December 2. Five prominent and politically varied men will serve as mediators and sponsors. The GOM, however, will not retract the decree terminating LFC.
- d. Qualified ex-LFC workers can be rehired to work for the Comision Federal de Electricidad (CFE), the national monopoly that has taken over the Mexico City market. They can be hired as individuals but not collectively because the CFE already has a functional union. There can only be one union per company, so the request to rehire workers with a collective contract is legally impossible to honor.
- e. The denial of the toma de nota (official GOM recognition of union election results) was justified by the allegations of irregularity brought by members of the SME. Furthermore, the Federal Council for Reconciliation and Arbitration (JFCA) determined on December 2 that the complaints brought against Martin Esparza by the other SME presidential candidate, Alejandro Munoz Resendiz, were valid. Esparza's victory was correctly thrown out by the appropriate body.

17. (C) When Castro concluded, Gacek of the AFL-CIO presented the delegation's response. He highlighted the delegation's concerns for labor and human rights, and stressed his interest in the ILO's response to the SME case. The delegation believed that Mexico's handling of this matter was the inverse of what the ILO requires in established jurisprudence. In his response, Jorge Rodriguez somewhat

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glossed over Mexico's obligations under the ILO and the toma de nota process, but responded to specific legal points in Gacek's speech, insisting that the GOM believes it has acted absolutely in accordance with its own laws and its international obligations. He stressed the constant dialog that the GOM maintains with Secretary of Labor Hilda Solis and with their Canadian counterpart on NAALC issues. He also responded to assertions that the EU had condemned GOM actions, saying that it is impermissible that the EU should publicly opine on Mexican laws. Rodriguez stressed repeatedly that GOM has complied absolutely with Mexican laws and has been more generous than the legal requirement in the payment of severances.

18. (C) Ben Davis, Mexico Representative for the AFL-CIO's Solidarity Center, summed up for the delegation by reminding STPS of the importance of human reality⁸ and of the importance of perceptions. Unions around the world perceive Mexico's actions in the SME case and the practice of the toma de nota as union-busting and anti-labor. Davis argued that regardless of the legal and juridical outcomes, the GOM has a responsibility to its people and its neighbors. Secure work helps keep people happy and at home; expanding decent work opportunities through strong and legitimate unions will help stem violence and migration. Daniel Ludlow, Director of the International Affairs Office of the STPS, reminded the

delegation that, regardless of international organized labor perceptions, the GOM followed its laws, and that furthermore, the Mexican public perceives this move as positive.

But No Meeting of the Minds

¶9. (C) Comment: This delegation came to Mexico primarily to show solidarity and support for the SME and Esparza; their calls for fair and balanced reporting from their embassies were dramatically weakened by their own meeting schedule that failed to include any group that doesn't support the SME. The Canadian members of the delegation were much angrier about the SME case than the U.S. members, a situation likely more tied to internal Canadian politics than to the details of the SME case. Already anti-NAFTA, the AFL-CIO and the CLC claimed that Mexico is not an equal partner in the situation. They repeated several times that the NAALC was not worth the paper it's written on and a waste of time in negotiations and in maintenance and enforcement. The delegation will pass a report of its findings to Laboff.

¶10. (C) Nonetheless, many of the issues the delegation brought to the table are valid in their own right, especially rule of law and inconsistencies between Mexican labor traditions and ILO standards. Unfortunately, the delegation is supporting the SME uncritically, and that will weaken its ability to get broad labor rights issues into discussions with decision makers. End comment.
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